

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MARGARET LOZANO,

Appellant,

v.

DEPARTMENT OF SOCIAL AND HEALTH  
SERVICES,

Respondent.

) Case No. DISM-03-0071

)  
) FINDINGS OF FACT, CONCLUSIONS OF  
) LAW AND ORDER OF THE BOARD

**I. INTRODUCTION**

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, GERALD L. MORGEN, Vice Chair; and BUSSE NUTLEY, Member. The hearing was held at the Department of Social and Health Services, Community Services Division, 1002 North 16th Avenue, Yakima, Washington, on August 19 and 20, 2004, September 27, 2004, and on October 14 and 15, at the Division of Developmental Disabilities, November 19, 2004 at the Department of Labor and Industries, 15 West Yakima Avenue. The parties submitted written closing argument on December 23, 2004.

1.2 **Appearances.** Appellant Margaret Lozano was present and was represented by Jacqueline Shea, Attorney at Law, Shea & Brown, P.S. Patricia Thompson, Assistant Attorney General, represented Respondent Department of Social and Health Services.

1.3 **Nature of Appeal.** This is an appeal from a disciplinary sanction of dismissal for neglect of duty, gross misconduct, and willful violation of agency policy. Respondent alleged that Appellant engaged in an inappropriate and unprofessional relationship with a client on her caseload.

## II. FINDINGS OF FACT

2.1 Appellant Margaret Lozano was a permanent employee for Respondent Department of Social and Health Services. Appellant and Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder, Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on August 20, 2003.

2.2 Appellant began her employment with DSHS in September 1997. As a Social Worker 3 at the Division of Children and Family Services, Appellant provided services to children at risk for abuse and neglect. During her tenure as a social worker, Appellant received numerous commendations and letters of appreciation.

2.3 Social Worker Debra Bond was Appellant's supervisor until approximately January 2003, when Appellant transferred into the Child Welfare Services (CWS) Unit. Appellant has no history of prior formal disciplinary actions; however, Ms. Bond provided her with a counseling letter dated September 10, 2002, for attendance issues that impacted her performance.

2.4 After Appellant's transfer to the CWS Unit, Social Worker Supervisor Kwaji Miller began supervising Appellant. Greg Dootson, Area Administrator for the Yakima Field Office, was Appellant's second-line supervisor. Immediately prior to Appellant's transfer to the CWS Unit,

Ms. Bond and Mr. Dootson met with Ms. Miller to discuss concerns regarding Appellant's performance, including issues related to her attendance and vendor payments. Mr. Dootson directed Ms. Miller to review all vendor payments authorized by Appellant and forward them to him for approval.

2.5 By letter dated July 8, 2003, Kenneth D. Nichols, Regional Administrator for the Division of Children and Family Services, notified Appellant of her dismissal effective July 24, 2003. Mr. Nichols charged Appellant with neglect of duty, gross misconduct, and willful violation of agency rules and regulations, specifically Policies 540 (Employee Relationship with Clients, Vendors and Outside Organizations) and 6.04 (Standards of Ethical Conduct). Mr. Nichols alleged Appellant engaged in misconduct when she:

- 1) visited V.O.'s residence late one evening and invited her to a tavern;
- 2) took V.O. to get her tongue pierced, paid for it and also had her own tongue pierced;
- 3) took V.O. into her work area where V.O. saw the file of another client and indicated the client's husband dealt drugs. Later, Appellant contacted V.O. to ask if she was willing to act as a drug informant for the Yakima Police Department; and
- 4) discussed client A.G.'s case with V.O. and during which V.O. volunteered to supply drugs to A.G. so Appellant could order a urinalysis on A.G.

#### **Allegation #1**

2.6 Appellant admits that on or around March 21, 2003, she made an unannounced visit to the home of V.O. at approximately 11:30 p.m. V.O. was a client on Appellant's caseload who suffered from alcohol and drug addiction. In a written statement Appellant provided during the initial investigation, Appellant denied having invited V.O. out for a drink. Rather, she indicated the purpose for her visit was to check on V.O. because she was concerned with V.O.'s pregnancy due

1 to her diagnosis of cancer, and she asserted that she invited V.O. out to eat since there was no food  
2 in the home. Prior to her visit to V.O.'s home, Appellant had been out drinking with friends.

3  
4 2.7 In a separate sworn statement, Appellant also wrote, "... It was not unusual for me or other  
5 social workers to stop by a client's house. Since I am a non-scheduled worker and sometimes  
6 perform job duties outside the normal scope of business hours, I didn't see any problem stopping by  
7 to check on [V.O.] that night. ..." Appellant also wrote that she "felt it was within professional  
8 limits to check on her," and that "I would have been shirking my duty ..."

9  
10 2.8 During her testimony before the Board, Appellant again asserted she invited V.O. out to eat  
11 because she was concerned for her well-being. However, Appellant also testified that her late night  
12 visit was appropriate because at that time, V.O. was no longer a client of the department and she  
13 argued her visit was not related to her position as a social worker and that she was not restricted  
14 from visiting V.O. Appellant also testified that she was driving by V.O.'s residence on her way  
15 home, noticed the lights to V.O.'s residence were on and decided to check on V.O.'s health.  
16

17  
18 2.9 Ms. Miller conducted the initial investigation of misconduct and she interviewed V.O., who  
19 indicated that Appellant had been out drinking with friends and "invited her out" and wanted to go  
20 to "Jackson's or Pete's." V.O. declined the invitation and indicated she was surprised by  
21 Appellant's unannounced visit.  
22

23  
24 2.10 Appellant's reasons for why she visited V.O.'s residence late in the evening have been  
25 inconsistent. However, we find that when Appellant made the visit to V.O.'s residence, both she  
26 and V.O. understood V.O. was still a client of DSHS. We further find that Appellant asked V.O. as

1 a social invitation to Jackson's or Pete's, local Yakima area bars, despite knowing that she was a  
2 social worker representing the Department of Social and Health Services. Although Appellant was  
3 a non-scheduled work-week employee and often worked beyond 5 p.m., the credible testimony  
4 established that most after hour home visits occur prior to 9 p.m. Furthermore, Appellant's  
5 testimony is not credible because, based on the route Appellant took home that night, it was  
6 impossible for her to view V.O.'s residence, which was an apartment located in the basement of a  
7 home with the entrance from the back of the home. The only way for Appellant to determine  
8 whether the lights to V.O.'s home were on was to drive and park in the alley behind the home, exit  
9 her car and approach V.O.'s door.  
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## 11 **Allegation #2**

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13 2.11 There is no dispute that in the summer of 2002, Appellant took V.O. to have her tongue  
14 pierced and that she paid for the piercing because V.O. did not have the money and agreed to repay  
15 Appellant at a later time. Appellant also had her own tongue pierced at the same time. Appellant  
16 claims she took V.O. to have her tongue pierced as a reward for completing a treatment program.  
17 However, V.O. testified that she had not completed a treatment program at the time she had her  
18 tongue pierced.  
19

20 2.12 DSHS does not have a specific policy addressing employees providing gifts to clients as  
21 rewards for making significant accomplishments on treatment plans. DSHS has adopted Personnel  
22 Policy 540, which establishes the standards for employees' relationships with clients. The policy, in  
23 part, prohibits employees from engaging in any transaction with a client that may result in a conflict  
24 of interest. On the other hand, we also heard conflicting testimony regarding the **practice** within  
25 the department among some employees, who would provide clients making significant  
26

1 accomplishments in their treatment plans with items such as flowers, gift certificates, and  
2 complimentary lunches.

3  
4 2.13 Under the circumstances presented here, we find that Appellant's gift to V.O. in the form of  
5 a tongue piercing was inappropriate and did not meet the standard practice within the department to  
6 provide gifts to reward clients. Appellant provided no evidence to support her contention that the  
7 "gift" to V.O. was the result of a significant treatment accomplishment. Furthermore, the nature of  
8 the gift went beyond the types of gifts other social workers were providing as rewards to clients.  
9 Moreover, Appellant acted unprofessionally and blurred the social worker/client relationship when  
10 she had her own tongue pierced while in the presence of V.O.

11  
12 **Allegation #3**

13 2.14 Appellant met with V.O. in her work cubicle where the names of clients were visible on the  
14 spine of binders. V.O. recognized the name of one of Appellant's clients. The client in question,  
15 L.R., was on Appellant's caseload. V.O. informed Appellant that L.R.'s husband was dealing drugs  
16 in the home where children were present. Appellant subsequently reported this information to  
17 Detective G. Copeland of the Yakima Police Department. Detective Copeland inquired whether  
18 V.O. would be willing to act as an informant and Appellant asked if he would like her to find out.  
19 Subsequently, Appellant spoke with V.O. and asked whether V.O. would be willing to act as an  
20 informant for the Yakima Police Department. Appellant provided V.O. with Detective Copeland's  
21 name and number, and she periodically spoke with Detective Copeland to ask whether L.R.'s  
22 husband had made a purchase of drugs from V.O.  
23

24  
25 **Allegation #4**  
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1 2.15 A.G. was another DSHS client on Appellant's caseload. V.O. informed Appellant that she  
2 and A.G. were friends and that A.G. relapsed on drugs and was using "crank." Appellant told V.O.  
3 that she could take no action on behalf of the department unless she had proof of A.G.'s drug use.  
4 V.O. told Appellant to conduct a urinalysis on A.G. on a Monday because she would get A.G. high  
5 on Sunday. V.O. later called and said that she had not seen A.G. on the Sunday as planned.

6  
7 2.16 The department does not have a policy that prohibits clients entering the work area of  
8 employees even though employees are encouraged to meet with clients in conference rooms rather  
9 than in their cubicles.  
10

11 2.17 DSHS has adopted Administrative Policy 6.04, Standards of Ethical Conduct for  
12 Employees, which applies to all DSHS employees. The policy, in relevant part, states:

13 The Department of Social and Health Services requires employees to perform duties  
14 and responsibilities in a manner that maintains standards of behavior that promote  
15 public trust, faith, and confidence, specifically, employees:

16 . . . .

17 Strengthen public confidence in the integrity of state government by demonstrating  
18 the highest standards of personal integrity, fairness, honesty, and compliance with  
19 laws, rules, regulations, and departmental policies. . . .

20 2.18 Policy 6.04 prohibits employees from disclosing confidential information to any person not  
21 authorized to receive the information. Appellant understood that as a social worker, she was  
22 prohibited from discussing case information of clients on her caseload with others, including other  
23 clients. Although social workers often receive client information from other clients, DSHS has a  
24 system in place to ensure that any referral information regarding child neglect or abuse is properly  
25 documented by Intake, the unit responsible for receiving and categorizing such information. In this  
26 case, it is clear that Appellant did not advise V.O. that she could not discuss other clients' cases

1 with her nor did she advise V.O. to make a referral with Intake, a unit where Appellant previously  
2 worked.

3  
4 2.19 Kenneth D. Nichols, Regional Administrator for Region 2, Division of Children and Family  
5 Services, was Appellant's appointing authority when the discipline was imposed. Prior to making a  
6 determination of misconduct, Mr. Nichols reviewed the conduct investigation report, Ms. Miller's  
7 written report of her interview with V.O., Appellant's written response to allegation #1, as well as  
8 other written information Appellant provided which resulted in allegations 2 through 3. Mr.  
9 Nichols concluded Appellant engaged in misconduct in all four of the allegations and that she  
10 violated trust placed in her to perform her social worker duties in a professional manner and with  
11 the utmost integrity.

12  
13 2.20 Mr. Nichols further determined Appellant violated Policy 540 when she paid for V.O. to  
14 have her tongue pierced, thereby engaging in a personal transaction with V.O. that created a conflict  
15 of interest and demonstrated that she established a significant personal relationship with a client.

16  
17 2.21 Mr. Nichols also found that Appellant neglected her duty and violated the confidentiality of  
18 clients when she engaged in conversations with V.O. about L.R. and A.G. Mr. Nichols determined  
19 that once V.O. recognized the names of other DSHS clients, it was inappropriate for Appellant to  
20 give any response or acknowledgement of their status as client. Mr. Nichols also found that  
21 Appellant behaved egregiously when she encouraged a client to do drug buys. Because Appellant  
22 was an authority figure and a trusted person to V.O., he believed that V.O. may have been  
23 encouraged by Appellant to engage in the drug buys.

24  
25 2.22 In determining the level of discipline, Mr. Nichols met with Appellant. After considering  
26 Appellant's response to the charges, Mr. Nichols determined Appellant failed to present any



1 mitigating circumstances. Mr. Nichols concluded Appellant neglected her duty, committed gross  
2 misconduct, and that she failed to follow agency rules. When considering the allegations to  
3 Appellant's history with the department, Mr. Nichols found that dismissal was the appropriate  
4 sanction.

### 6 **III. ARGUMENTS OF THE PARTIES**

7 3.1 Respondent asserts Appellant violated the trust inherent in the position of a social worker  
8 and neglected her duty to act professionally and with the utmost integrity. Respondent argues  
9 Appellant did not act appropriately as a social worker when she visited V.O., a client on her  
10 caseload, late at night to ask her out to a local tavern. Respondent argues Appellant also acted  
11 unprofessionally when she took V.O. to get her tongue pierced, loaned her the money despite  
12 knowing V.O. could not repay her, and had her own tongue pierced with the client. Respondent  
13 argues the credible evidence support Appellant passed along more than just information to police  
14 and that she acted as an intermediary to arrange for V.O. to be a drug informant. Respondent  
15 further asserts Appellant violated agency policies when she engaged in conversations with V.O.  
16 about other DSHS clients. Respondent asserts all the charges have been proven and the appointing  
17 authority's conclusion to terminate Appellant was the only appropriate action.

18  
19 3.2 Appellant contends the state failed to show she neglected her duty, committed gross  
20 misconduct or failed to follow agency rules. Appellant asserts she was a skilled social worker with  
21 no complaints about V.O.'s case or complaints from V.O. Appellant asserts that it is a known  
22 practice that social workers visit clients at various times of the day and night but have not been  
23 terminated. Appellant asserts that nothing about her visit to V.O. was inappropriate or  
24 unprofessional, but rather showed her concern for V.O.'s well-being. Appellant asserts that  
25 although rewarding V.O. by taking her to get her tongue pierced was unconventional, nothing in the  
26 agency's policies address what types of actions a social worker may take to commend a client.

1 Appellant also asserts the tongue piercing was a voluntary act that did not harm the client's  
2 children.

3       Regarding allegations #3 and #4, Appellant asserts the department failed to provide any  
4 evidence to show she violated the confidentiality of any client. Appellant asserts the practice within  
5 DSHS allows social workers to receive information from various sources, she asserts she only took  
6 in the information from V.O. Appellant further asserts there is no evidence to support she  
7 encouraged V.O. to act as a police informant or that she encouraged V.O. to supply A.G. with  
8 drugs. Appellant further argues that Mr. Dootson was discriminating against her and that her  
9 concerns were not fully investigated. Appellant argues the sanction of termination is too severe  
10 and, when considering her history with the agency, a lesser sanction could have addressed any  
11 concerns regarding her performance.

#### 12 13 **IV. CONCLUSIONS OF LAW**

14 4.1 The Personnel Appeals Board has jurisdiction over the parties and the subject matter.  
15

16 4.2 In a hearing on appeal from a disciplinary action, Respondent has the burden of supporting  
17 the charges upon which the action was initiated by proving by a preponderance of the credible  
18 evidence that Appellant committed the offenses set forth in the disciplinary letter and that the  
19 sanction was appropriate under the facts and circumstances. WAC 358-30-170; Baker v. Dep't of  
20 Corrections, PAB No. D82-084 (1983).  
21

22 4.3 Neglect of duty is established when it is shown that an employee has a duty to his or her  
23 employer and that he or she failed to act in a manner consistent with that duty. McCurdy v. Dep't  
24 of Social & Health Services, PAB No. D86-119 (1987).  
25  
26

1 4.4 Gross misconduct is flagrant misbehavior which adversely affects the agency's ability to  
2 carry out its functions. Rainwater v. School for the Deaf, PAB No. D89-004 (1989). Flagrant  
3 misbehavior occurs when an employee evinces willful or wanton disregard of his/her employer's  
4 interest or standards of expected behavior. Harper v. WSU, PAB No. RULE-00-0040 (2002).

5  
6 4.5 Willful violation of published employing agency or institution or Personnel Resources  
7 Board rules or regulations is established by facts showing the existence and publication of the rules  
8 or regulations, Appellant's knowledge of the rules or regulations, and failure to comply with the  
9 rules or regulations. Skaalheim v. Dep't of Social & Health Services, PAB No. D93-053 (1994).

10  
11 **Allegation #1.**

12 4.6 In her capacity as a social worker, Appellant had a responsibility to demonstrate a high level  
13 of personal integrity and sound judgment. Appellant's argument that she did not believe V.O. was a  
14 DSHS client in March 2003 lacks credibility and does not negate her duty to abide by the rules and  
15 regulations of the agency and to comply with the agency's expectations of professional behavior.  
16 Respondent has met its burden of proving that Appellant neglected her duty and went beyond her  
17 social worker duties when she visited V.O. late at night and invited her out. Although Appellant  
18 worked a non-scheduled work week, her visit to V.O.'s home at 11:30 p.m. was unacceptable.  
19 Respondent has proven that Appellant's misconduct had a negative impact on the department and  
20 constituted gross misconduct.

21  
22 **Allegation #2**

23 4.7 By paying for V.O. to have her tongue pierced and by having her own tongue pierced with  
24 the client, Appellant crossed the boundaries of her position as a social worker and she failed to  
25 maintain a professional relationship with a client on her caseload. By Appellant's own admission,  
26 she exhibited extremely poor judgment. Respondent has met its burden of proving that Appellant

1 failed to conduct her duties in an ethical manner and maintain proper relationships with her clients,  
2 constituting a violation of Policy 6.04.

3  
4 **Allegations # 3 and #4**

5 4.8 As a Social Worker 3, Appellant understood her duty and responsibility to maintain  
6 confidentiality as required by the department's practice and policy. Respondent has met its burden  
7 of proving that Appellant neglected her duty as a social worker by engaging in conversations with  
8 V.O. about other clients on her caseload. Even though V.O. may have recognized L.R. and A.G. as  
9 individuals she knew, Appellant had an obligation to avoid addressing other clients' cases with  
10 V.O. Appellant's decision to engage in discussions with V.O. about the cases of other clients was  
11 highly inappropriate, unethical, and interfered with the department's ability to ensure the  
12 confidentiality of clients. Furthermore, Appellant again overstepped the bounds of her social  
13 worker position when she contacted V.O. to ask whether she would be willing to act as a police  
14 informant, and she clearly acted as an intermediary between Detective Copeland and V.O.

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16 4.9 Although it is not appropriate to initiate discipline based on prior formal and informal  
17 disciplinary actions, including letters of reprimand, it is appropriate to consider them regarding the  
18 level of the sanction which should be imposed here. Aquino v. University of Washington, PAB No.  
19 D93-163 (1995).

20  
21 4.10 In determining whether a sanction imposed is appropriate, consideration must be given to  
22 the facts and circumstances, including the seriousness of the offenses. The penalty should not be  
23 disturbed unless it is too severe. The sanction imposed should be sufficient to prevent recurrence,  
24 to deter others from similar misconduct, and to maintain the integrity of the program. An action  
25 does not necessarily fail if one cause is not sustained unless the entire action depends on the  
26 unproven charge. Holladay v. Dep't of Veterans Affairs, PAB No. D91-084 (1992).

1  
2 4.11 In her defense, Appellant contends that Mr. Dootson was subjecting her to discriminatory  
3 behavior. After reviewing the evidence, it is clear that Appellant was under additional scrutiny by  
4 Mr. Dootson because he had concerns regarding her performance as a social worker. Appellant,  
5 however, has failed to provide any evidence to support that Mr. Dootson subjected her to any  
6 inappropriate actions or engaged in any discriminatory behavior because of her political or religious  
7 opinions or affiliations, race, sex, age, disability, or veteran's status. Furthermore, Appellant's  
8 intentional decision to engage in activities that constituted misconduct had no connection to the  
9 performance issues Mr. Dootson was addressing.

10  
11 4.12 As an employer, Respondent has a responsibility to ensure that its employees conduct  
12 business in a professional and ethical manner. The appointing authority presented persuasive  
13 testimony that Appellant's misconduct irreparably harmed the fundamental trust placed in her by the  
14 agency and the public. Under the facts and circumstances of this case, including the seriousness of  
15 Appellant's misconduct, we conclude that Respondent has proven that the sanction of dismissal is  
16 appropriate and the appeal should be denied.

17  
18 **V. ORDER**

19 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Margaret Lozano is denied.

20  
21 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

22  
23 WASHINGTON STATE PERSONNEL APPEALS BOARD

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Busse Nutley, Vice Chair

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Gerald L. Morgen, Member